SB Civil Writ Petition No.6376/1994

Ranjit Talkies, Bundi Vs Judge, Labour Court, Kota & ors

4.10.2007

Hon'ble Mr Justice Ashok Parihar

Mr V Agrawal - for petitioner

Mr Sudarshan Laddha – for respondents

Mr KK Sharma with Mr SK Sharma – for resp No.6

BY THE COURT:

Initially, Ranjit Talkies was run by a partnership firm in the name of Chitra Pradarshan upto 1.4.1975. It has been alleged that after expiry of the lease and licence of the above firm the establishment was closed. The workers at that time were given retrenchment compensation as per the agreement with the employer. There has also been a condition that in case the appointments are given in future, the concerned workmen shall be given preferential employment as per provisions of section 25-H of the Industrial Disputes Act, 1947 (for short 'the Act').

Admittedly, the establishment was again started from 11.9.1975 not by the same partnership firm but by another person namely Roop Narain Shah. Since the workmen retrenched earlier were not given fresh appointment as per provisions of section 25-H of the Act, a dispute was raised

by the union and the same was referred by the State Government to Labour Court for adjudication vide Notification dated 26.9.1981 in the terms that whether 22 workmen mentioned in the Schedule were entitled for reinstatement with continuity of service.

The statement of claim was submitted by the respondent union. In reply, it has been alleged that the present management run by Shah Roop Narain had no connection with the earlier management of the partnership firm Chitra Pradarshan and further the present management is not bound by the settlement as executed above by the earlier management. To substantiate their claim, union submitted the evidence to the extent that two sons of Shah Roop Narain namely; Shah Anil Kumar and Shah Sunil Kumar were partners of the earlier firm i.e. Chitra Pradarshan. It was only to remove old employees and engage new persons the establishment was closed temporarily and again restarted just after five months with the changed name by the father Shah Roop Narain.. No evidence, whatsoever, was led on behalf of the petitioner to controvert the evidence so led on behalf of the respondent union in spite of repeated opportunities given.

The Labour Court, on the basis of evidence and

material on record, answered the Reference to the extent that out of 22 workmen 18 were entitled for reinstatement from the date the establishment was restarted on 11.9.1975. Since 4 workmen had already died they were entitled for benefits from the date the establishment was restarted till the date of their death. The award dated 29.3.1993 is under challenge in the present writ petition.

Mr Agrawal, learned counsel for the petitioner, submitted that after having entered into compromise with the earlier employer the concerned workmen were estopped from seeking relief of reinstatement from the new firm and even otherwise they could get preferential employment only if the same establishment at all is restarted. It has further been submitted that the present management had no relation, whatsoever, with the earlier management. It has also been alleged that violation of section 25-H of the Act has not been proved at all.

After hearing learned counsel for the parties, I have carefully gone through the material on record.

The facts, as stated above, more or less, are not disputed so far. Nothing has been placed on record that there has been closure of the unit/establishment as

provided under Chapter V-B of the Act. There is also no dispute that premises of the business is same and the nature of business has also not been changed. Engagement of new employees for the work of same nature have also not been disputed. Mere change of owner will not deprive the workers of their legal right provided under the Act. Neither of the lease deed or license have been produced before the Labour Court or even before this Court. Even as per alleged agreement the retrenchment compensation was to be paid only on the ground of expiry of lease. The benefit under section 25-H of the Act was also to be given if the same business continues in the same premises by the same family may be under different names. In absence of any evidence led on behalf of the petitioner, the only presumption can be drawn that the petitioner has resorted to 'unfair labour practice' in the present matter by removing old employees and engaging new persons of the choice, more so, when Manager remained the same person. There is also no dispute that even after passing of the award the establishment continued to function as it is.

Considering entire facts and circumstances, since, after due consideration, proper discretion has been used by the Labour Court in granting appropriate relief to the concerned workmen, I find no ground for any further

interference of this court under writ jurisdiction. The writ petition is dismissed accordingly as having no merits.

(Ashok Parihar) J.

bnsharma